
No. 20-55770

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

ALEJANDRO RODRIGUEZ, et al.
Petitioners-Appellees,

v.

WILLIAM BARR, et al.
Respondents-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
Case No. 2:07-cv-03239-TJH

**EXCERPTS OF RECORD
VOLUME 1**

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9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **WESTERN DIVISION**

13 ALEJANDRO RODRIGUEZ, *et al.*,

14 Petitioners,

15 vs.

16 DAVID MARIN, *in his capacity as*
17 *U.S. Immigration and Customs*
Enforcement, Los Angeles District
18 *Field Office Director, et al.*,

19 Respondents.
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Case No. CV 07-3239-TJH

NOTICE OF APPEAL

The Honorable Terry Hatter, Jr.

1 Notice is hereby given that, under 28 U.S.C. § 1292(a)(1), WILLIAM BARR,
 2 United States Attorney General; CHAD WOLF, Acting Secretary, Homeland
 3 Security; JAMES MCHENRY, Director, Executive Office for Immigration Review;
 4 DAVID MARIN, Field Office Director, Los Angeles District, Immigration and
 5 Customs Enforcement; DON BARNES Sheriff of Orange County; OFFICER
 6 NGUYEN, Officer-in-Charge, Theo Lacy Facility; LUKE SOUTH, Commander,
 7 Theo Lacy Facility; LISA VON NORDHEIM, Captain, James A. Musick Facility;
 8 TERRY NELSEN, Assistant Field Office Director, Adelanto Detention Facility,
 9 Respondents in the above-named case, hereby appeal to the United States Court of
 10 Appeals for the Ninth Circuit from an order denying Respondents' motion to vacate
 11 the permanent injunction (ECF 550) and motion to vacate the preliminary injunction
 12 and decertify the class (ECF 533), entered in this action on May 28, 2020, ECF 555.
 13

14 Dated: July 27, 2020

JOSEPH HUNT

Assistant Attorney General
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 ERNESTO MOLINA
 Deputy Director
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 Appellate Court Section

19 /s/ Sarah Wilson
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CERTIFICATE OF SERVICE

I certify that on July 27, 2020, I served a copy of the foregoing by CM/ECF which delivered a copy to all counsel of record, including:

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Sarah Wilson

United States Department of Justice

United States District Court
Central District of California
Western Division

ALEJANDRO RODRIGUEZ, *et al.*,

Petitioners,

v.

DAVID MARIN, *et al.*,

Respondents.

CV 07-03239 TJH (SPx)

Order

The Court has considered Respondents' motion to vacate the preliminary injunction and decertify the class [dkt # 533] and Respondents' motion for reconsideration of the Court's March 9, 2020, order granting Petitioners' motion for reconsideration and to vacate the permanent injunction [dkt # 550], together with the moving and opposing papers.

This case has been pending for 13 years and, at this point, has a very complex substantive and procedural history. The complexity is due, at least in part, to the fact that this case has ricocheted among this Court, the Ninth Circuit Court of Appeals, and the United States Supreme Court.

In response to the instant motions, the Court has reviewed the entire record and,

1 in particular, the orders issued by this Court, the Ninth Circuit, and the Supreme Court.
2 Based on those orders, this case has been placed in a complicated, and unusual,
3 procedural posture.

4 The Court will, now, attempt to reconcile those orders so that this case can move
5 forward toward a final resolution. In reconciling those orders, the Court cannot
6 overrule the orders issued by the Ninth Circuit or the Supreme Court. Indeed, this
7 Court is duty bound to respect, give meaning, reconcile and apply the orders of those
8 higher courts.

9 Initially, the Court denied Petitioners' motion for class certification as to their
10 statutory claims. The Ninth Circuit reversed, noting that certification would be proper
11 if the class were divided into subclasses. *See Rodriguez v. Hayes*, 591 F.3d 1105 (9th
12 Cir. 2010) [*"Rodriguez I"*]. On March 8, 2011, in light of *Rodriguez I*, this Court
13 certified the class action and defined the class as "all non-citizens within the Central
14 District of California who: (1) Are or will be detained for longer than six months
15 pursuant to the general immigration detention statutes pending completion of removal
16 proceedings, including judicial review; (2) Are not detained pursuant to a national
17 security detention statute...; and (3) Have not been afforded a hearing to determine
18 whether their prolonged detention is justified." The Court certified four subclasses;
19 class members were divided into subclasses based on which immigration statute they
20 were detained under – 18 U.S.C. §§ 1225(b), 1226(a), 1226(c), and 1231(a).

21 Petitioners, then, sought a preliminary injunction, which this Court granted, and
22 the Ninth Circuit affirmed. *See Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013)
23 [*"Rodriguez II"*]. Petitioners, then, moved for summary judgment and sought a
24 permanent injunction, which this Court granted, and the Ninth Circuit affirmed in part
25 and reversed in part. *See Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015)
26 [*"Rodriguez III"*]. The Ninth Circuit held that summary judgment and the permanent
27 injunction were warranted as to three of Petitioner's statutory claims and the
28 corresponding subclasses, but reversed as to Petitioners' 8 U.S.C. § 1231(a) claim and

1 the corresponding subclass. *See Rodriguez III*, 804 F.3d at 1090. The Government,
2 then, sought a writ of *certiorari* from the Supreme Court, which was granted. The
3 Supreme Court reversed *Rodriguez III* and remanded this case to the Ninth Circuit to
4 consider whether the class action may continue based on Petitioners' constitutional
5 claims, which had not yet been considered by this Court. *See Jennings v. Rodriguez*,
6 138 S. Ct. 830 (2018) [*"Jennings"*]. The Supreme Court was silent as to the status of
7 the permanent injunction. On remand, the Ninth Circuit, in turn, remanded this case
8 to this Court for it to consider Petitioner's constitutional claims; the Ninth Circuit left
9 this Court's permanent injunction in place "pending the consideration of vital
10 constitutional issues." *See Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018)
11 [*"Marin"*].

12 On July 10, 2019, the Court granted Petitioners' motion for leave to file a Fourth
13 Amended Complaint. After Petitioners filed their Fourth Amended Complaint,
14 Respondents moved to dismiss.

15 On November 7, 2019, the Court granted in part and denied in part Respondents'
16 motion to dismiss Petitioners' Fourth Amended Complaint. That order included
17 language indicating that the Supreme Court had implicitly vacated the permanent
18 injunction in *Jennings*. On November 18, 2019, Petitioners moved for reconsideration
19 of the November 7, 2019, order, arguing that the Ninth Circuit expressly left in place
20 the "permanent injunction pending the consideration of... vital constitutional issues."
21 *See Marin*, 909 F.3d at 256.

22 On November 27, 2019, before the Court had an opportunity to rule on
23 Petitioners' motion for reconsideration, Respondents moved to vacate the preliminary
24 injunction.

25 On March 9, 2020, the Court granted Petitioners' motion for reconsideration and
26 issued an amended order that, *inter alia*, omitted the language regarding the permanent
27 injunction, pursuant to *Marin*.

28 On April 7, 2020, Respondents filed a motion for reconsideration of the Court's

1 March 9, 2020, order and for an order vacating the permanent injunction, arguing that
2 the Court's March 9, 2020, order, *inter alia*, deprived Respondents of the opportunity
3 to brief whether a permanent injunction should remain in place for the duration of the
4 proceedings in this matter. Respondents chose to file their motion to vacate the
5 preliminary injunction before the Court could rule on Petitioners' motion for
6 reconsideration, despite knowing that the status of the permanent injunction was in
7 dispute.

8 Normally, a preliminary injunction remains in force until a case is finally
9 resolved. Here, after the Court granted summary judgment in favor of Petitioners, it
10 issued a permanent injunction, which superceded the preliminary injunction. Then, the
11 Supreme Court reversed and vacated the summary judgment. Consequently, this Court
12 initially held that the Supreme Court had implicitly vacated the permanent injunction
13 when it vacated this Court's summary judgment. However, because the Ninth Circuit,
14 on remand from the Supreme Court, left the permanent injunction in place pending the
15 consideration of the constitutional issues, *Marin*, 909 F.3d at 256, this Court is
16 obligated to follow those instructions. Accordingly, Respondents' motions for
17 reconsideration and to vacate the permanent injunction must be denied.

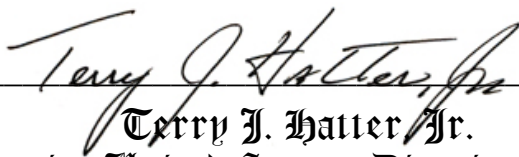
18 Because of the orders from the Ninth Circuit and the Supreme Court, there, now,
19 exists a procedural quagmire in that there is a permanent injunction in place without a
20 corresponding final judgment on the merits supporting that permanent injunction. Thus,
21 this Court has been entrusted with the task of fitting the proverbial round peg into the
22 square hole, while being duty bound to respect, give meaning, reconcile and apply the
23 orders of the Ninth Circuit and the Supreme Court. The most sensical resolution to this
24 procedural quagmire, while maintaining due respect for the orders of the Ninth Circuit
25 and the Supreme Court, is for this Court to deem its previously issued permanent
26 injunction to be, in effect, a preliminary injunction, which shall supercede the
27 previously issued preliminary injunction, and which shall, now, remain in place pending
28 a final resolution of Petitioners' constitutional claims. Accordingly, Respondents'

1 motion to vacate the preliminary injunction shall be denied as moot.

2 Finally, while considering the procedural quagmire caused by the continuation
3 of the permanent injunction, the Court simultaneously considered Respondents' motion
4 to de-certify the class. When the Court certified this case into sub-classes, it did so
5 pursuant to *Rodriguez I*. Thereafter, the certification of the class permeated all aspects
6 of this case. Indeed, the Court's original preliminary and permanent injunctions
7 ordered remedies based on class members' membership in particular sub-classes. *See*
8 *Rodriguez II and III*. Because the Ninth Circuit ordered the permanent injunction to
9 remain in effect, the decertification of the class, at this juncture, would move this case
10 backward rather than forward. As previously stated, that is not the direction the Court
11 is attempting to move this case. Consequently, the motion to decertify the class must
12 be denied.

13
14 IT IS SO ORDERED.

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16 Date: May 28, 2020

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18 
19 Terry J. Hatter Jr.
20 Senior United States District Judge
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United States District Court
Central District of California
Western Division

ALEJANDRO RODRIGUEZ, *et al.*,

Petitioners,

v.

DAVID MARIN, *et al.*,

Respondents.

CV 07-03239 TJH (RNBx)

Amended
Order
[528]

The Court has considered Respondents' motion to dismiss, together with the moving and opposing papers.

Over the past twelve years, this immigration class action has ricocheted between this Court, the Ninth Circuit Court of Appeals, and the United States Supreme Court. At the initiation of this action, Petitioners set forth two theories of their case – statutory and constitutional – and moved forward with their statutory claims, first.

Initially, the Court denied Petitioners' motion for class certification as to their statutory claims. The Ninth Circuit reversed, noting that certification would be proper if the class were divided into subclasses. *See Rodriguez v. Hayes*, 591 F.3d 1105 (9th Cir. 2010) [*"Rodriguez I"*]. On April 5, 2010, in light of *Rodriguez I*, this Court certified the class as "all non-citizens within the Central District of California who: (1)

1 Are or were detained for longer than six months pursuant to one of the general
2 immigration detention statutes pending completion of removal proceedings, including
3 judicial review; (2) Are not and have not been detained pursuant to a national security
4 detention statute; and (3) Have not been afforded a hearing to determine whether their
5 detention is justified.”

6 Petitioners, then, sought a preliminary injunction, which this Court granted, and
7 the Ninth Circuit affirmed. *See Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013)
8 [“*Rodriguez II*”]. Petitioners, then, moved for summary judgment and sought a
9 permanent injunction, which this Court granted, and the Ninth Circuit affirmed in part
10 and reversed in part. *See Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015)
11 [“*Rodriguez III*”]. The Ninth Circuit held that summary judgment and a permanent
12 injunction were warranted as to three of Petitioner’s statutory claims and subclasses,
13 but reversed as to Petitioners’ 8 U.S.C. § 1231(a) claim and subclass. *See Rodriguez*
14 *III*, 804 F.3d at 1090. The Ninth Circuit reasoned that the class was certified only as
15 to those individuals who were detained while waiting for a determination as to their
16 potential removability, whereas § 1231(a) dealt with those whom the Government had
17 already deemed removable and were merely waiting to be removed. *Rodriguez III*, 804
18 F.3d at 1085-1086. The Government sought a writ of *certiorari*, which was granted.

19 The Supreme Court reversed *Rodriguez III* and remanded this case to the Ninth
20 Circuit to consider whether the class may continue based on Petitioners’ constitutional
21 claims. *See Jennings v. Rodriguez*, 138 S. Ct. 830 (2018). Notably, the issue of
22 whether Petitioners’ § 1231(a) claim and subclass were properly rejected by the Ninth
23 Circuit was not appealed by Rodriguez and, therefore, never before the Supreme Court.
24 The Ninth Circuit remanded the action to this Court for further proceedings, and left
25 this Court’s permanent injunction in place “[e]nding the consideration of vital
26 constitutional issues.”

27 On July 11, 2019, Petitioners filed a Fourth Amended Complaint [“FAC”]
28 which, *inter alia*: (1) Added a new petitioner, Alex Cacho Castillo, who was detained

1 at the beginning of 2019, and released by May, 2019; (2) Reasserted a claim under §
2 1231(a); and (3) Added an Eighth Amendment claim.

3 Respondents, now, move to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and (6).

4 The party seeking federal jurisdiction bears the burden of establishing that
5 jurisdiction exists. *Scott v. Breeland*, 792 F.2d 925, 927 (9th Cir. 1986). A complaint
6 will be dismissed under Fed. R. Civ. P. 12(b)(1) if, *inter alia*, there is no case or
7 controversy. *See Baker v. Carr*, 369 U.S. 186, 198 (1962).

8 While a complaint need not include detailed factual allegations for each element
9 of each claim, it must contain enough facts to state a claim for relief that is plausible
10 on its face. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007). The Court
11 must accept all allegations in a complaint as true and draw all reasonable inferences
12 from those allegations. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A plaintiff
13 cannot simply restate the elements of her claim, but, rather, must allege enough facts
14 to allow the Court to draw a reasonable inference that a defendant is liable for the
15 misconduct alleged. *See Iqbal*, 556 U.S. at 678.

16 Respondents argued that because Cacho Castillo was detained for less than 6
17 months, he cannot serve as a named petitioner or be a member of this class.
18 Respondents are correct. Given the class definition, Cacho Castillo was, indeed,
19 misjoined. *See Fed. R. Civ. P. 20(a)(1)*. Petitioners argued that because the Board of
20 Immigration Appeals opinion that allowed for Cacho Castillo's release may have been
21 recently overturned, the Government may, at any time, cause him to be detained,
22 again. According to Petitioners, Cacho Castillo "likely would become" a class member
23 in the near future. The possibility of future injury is too speculative, here, to make
24 Cacho Castillo's claims ripe for adjudication. *See Wolfson v. Brammer*, 616 F.3d
25 1045, 1057 (9th Cir. 2010). Because Cacho Castillo failed to allege a case or
26 controversy ripe for adjudication, he must be dismissed. *See Baker*, 369 U.S. at 198.

27 Respondents, further, argued that Petitioners' are barred from reasserting a
28 claim, here, under § 1231(a) in light of *Rodriguez III* and the Supreme Court's holding

1 in *Jennings*. Indeed, the Ninth Circuit reversed this Court's grant of summary
 2 judgment on Petitioners' § 1231(a) claim and held that the § 1231(a) claim and subclass
 3 "does not exist" within this action. *See Rodriguez III*, 804 F.3d at 1090. Nevertheless,
 4 Petitioners argued that the § 1231(a) claim can move forward because the Ninth
 5 Circuit's decision in *Rodriguez III* was incorrectly decided because it is inconsistent
 6 with a prior Ninth Circuit case, *Diouf v. Napolitano*, 634 F.3d 1081, 1091 (9th Cir.
 7 2011). Petitioners' argument is misplaced. If Petitioners thought that the Ninth Circuit
 8 erred in deciding *Rodriguez III*, they should have petitioned the Ninth Circuit for
 9 reconsideration or a hearing *en banc*, or sought review from the Supreme Court.
 10 *Rodriguez III* is the law of the case to the extent that it resolved Petitioners' § 1231(a)
 11 claim and subclass, and Petitioners cannot reassert their § 1231(a) claim, here, where
 12 *Rodriguez III* so clearly resolved that claim. *See Rodriguez III*, 804 F.2d at 1080.

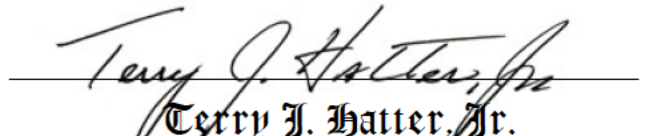
13 Respondents, finally, argued that this Court lacks subject matter jurisdiction over
 14 Petitioners' newly alleged Eighth Amendment claim because the new claim exceeded
 15 the scope of the Supreme Court's remand in *Jennings*. The Supreme Court's remand
 16 and its corresponding instructions were addressed to the Ninth Circuit, not to this
 17 Court. Indeed, this Court is not limited to the scope set forth by the Supreme Court
 18 to the Ninth Circuit, especially when the Ninth Circuit's subsequent remand to this
 19 Court expressly instructed this Court to consider, *inter alia*, "any other relevant issue."

20 Accordingly,

21 **It is Ordered** that the motion to dismiss be, and hereby is, **Granted** as to
 22 Petitioner Alex Cacho Castillo and Petitioners' § 1231 claim.

23 **It is further Ordered** that the motion to dismiss be, and hereby is, **Denied**
 24 as to Petitioners' Eighth Amendment claim.

25 Date: March 9, 2020

26 
 27 Terry J. Hatter, Jr.
 28 Senior United States District Judge

United States District Court
Central District of California
Western Division

ALEJANDRO RODRIGUEZ, *et al.*,

CV 07-03239 TJH (RNBx)

Petitioners,

v.

Order

WILLIAM BARR, *et al.*,

Respondents.

The Court has considered Petitioners' motion for "clarification or reconsideration," of the Court's November 7, 2019, order, together with the moving and opposing papers.

In this District, the grounds for a motion for reconsideration are governed by the Local Rules and the Federal Rules of Civil Procedure. Under the Local Rules, a party may move for reconsideration if: (1) Facts or law previously unknown and unknowable to the moving party come to light; (2) New facts or law emerge; or (3) There was a manifest failure to consider material facts. Local Rule 7-18. Under the Federal Rules of Civil Procedure, a party may move for reconsideration upon a showing of: (1) Mistake, surprise, or excusable neglect; (2) Newly discovered evidence; (3) Fraud; (4) A void judgment; (5) A satisfied or discharged judgment; or (6) Any other reason that

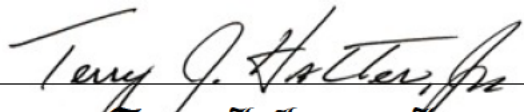
1 justifies relief. *See* Fed. R. Civ. P. 59 and 60(b).

2 In *Rodriguez v. Marin*, 909 F.3d 252 (9th Cir. 2018), the Ninth Circuit stated
3 that "... like the Supreme Court, we do not vacate the permanent injunction pending
4 the consideration of ... vital constitutional issues." Upon further consideration, this
5 Court will keep the permanent injunction in place pending a resolution on Petitioners'
6 constitutional claims.

7
8 Accordingly,

9
10 **It is Ordered** that the motion be, and hereby is, **Granted**. An amended order
11 will issue.

12
13 Date: March 9, 2020

14 
15 **Terry J. Hatter, Jr.**
16 **Senior United States District Judge**

United States District Court
Central District of California
Western Division

ALEJANDRO RODRIGUEZ, *et al.*,

Petitioners,

v.

DAVID MARIN, *et al.*,

Respondents.

CV 07-03239 TJH (RNBx)

Order

[521]

The Court has considered Respondents' motion to dismiss, together with the moving and opposing papers.

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1 Cir. 2010) [*“Rodriguez I”*]. On April 5, 2010, in light of *Rodriguez I*, this Court
2 certified the class as “all non-citizens within the Central District of California who: (1)
3 Are or were detained for longer than six months pursuant to one of the general
4 immigration detention statutes pending completion of removal proceedings, including
5 judicial review; (2) Are not and have not been detained pursuant to a national security
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8 Petitioners, then, sought a preliminary injunction, which this Court granted, and
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12 and reversed in part. *See Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015)
13 [*“Rodriguez III”*]. The Ninth Circuit held that summary judgment and a permanent
14 injunction were warranted as to three of Petitioner’s statutory claims and subclasses,
15 but reversed as to Petitioners’ 8 U.S.C. § 1231(a) claim and subclass. *See Rodriguez*
16 *III*, 804 F.3d at 1090. The Ninth Circuit reasoned that the class was certified only as
17 to those individuals who were detained while waiting for a determination as to their
18 potential removability, whereas § 1231(a) dealt with those whom the Government had
19 already deemed removable and were merely waiting to be removed. *Rodriguez III*, 804
20 F.3d at 1085-1086. The Government sought a writ of *certiorari*, which was granted.

21 The Supreme Court reversed *Rodriguez III* and remanded this case to the Ninth
22 Circuit to consider whether the class may continue based on Petitioners’ constitutional
23 claims. *See Jennings v. Rodriguez*, 138 S. Ct. 830 (2018). Notably, the issue of
24 whether Petitioners’ § 1231(a) claim and subclass were properly rejected by the Ninth
25 Circuit was not appealed by Rodriguez and, therefore, never before the Supreme Court.
26 The Ninth Circuit remanded the action to this Court for further proceedings.

27 Although neither the Supreme Court nor the Ninth Circuit expressly vacated the
28 permanent injunction, the Supreme Court implicitly did so because it reversed as to the

merits on summary judgment. *See Paige v. State of Cal.*, 102 F.3d 1035, 1040 (9th Cir. 1996). However, the preliminary injunction remains in place.

On July 11, 2019, Petitioners filed a Fourth Amended Complaint [“FAC”] which, *inter alia*: (1) Added a new petitioner, Alex Cacho Castillo, who was detained at the beginning of 2019, and released by May, 2019; (2) Reasserted a claim under § 1231(a); and (3) Added an Eighth Amendment claim.

Respondents, now, move to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and (6).

The party seeking federal jurisdiction bears the burden of establishing that jurisdiction exists. *Scott v. Breeland*, 792 F.2d 925, 927 (9th Cir. 1986). A complaint will be dismissed under Fed. R. Civ. P. 12(b)(1) if, *inter alia*, there is no case or controversy. *See Baker v. Carr*, 369 U.S. 186, 198 (1962).

While a complaint need not include detailed factual allegations for each element of each claim, it must contain enough facts to state a claim for relief that is plausible on its face. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007). The Court must accept all allegations in a complaint as true and draw all reasonable inferences from those allegations. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A plaintiff cannot simply restate the elements of her claim, but, rather, must allege enough facts to allow the Court to draw a reasonable inference that a defendant is liable for the misconduct alleged. *See Iqbal*, 556 U.S. at 678.

Respondents argued that because Cacho Castillo was detained for less than 6 months, he cannot serve as a named petitioner or be a member of this class. Respondents are correct. Given the class definition, Cacho Castillo was, indeed, misjoined. *See Fed. R. Civ. P. 20(a)(1)*. Petitioners argued that because the Board of Immigration Appeals opinion that allowed for Cacho Castillo’s release may have been recently overturned, the Government may, at any time, cause him to be detained, again. According to Petitioners, Cacho Castillo “likely would become” a class member in the near future. The possibility of future injury is too speculative, here, to make Cacho Castillo’s claims ripe for adjudication. *See Wolfson v. Brammer*, 616 F.3d

1 1045, 1057 (9th Cir. 2010). Because Cacho Castillo failed to allege a case or
2 controversy ripe for adjudication, he must be dismissed. *See Baker*, 369 U.S. at 198.

3 Respondents, further, argued that Petitioners' are barred from reasserting a
4 claim, here, under § 1231(a) in light of *Rodriguez III* and the Supreme Court's holding
5 in *Jennings*. Indeed, the Ninth Circuit reversed this Court's grant of summary
6 judgment on Petitioners' § 1231(a) claim and held that the § 1231(a) claim and subclass
7 "does not exist" within this action. *See Rodriguez III*, 804 F.3d at 1090. Nevertheless,
8 Petitioners argued that the § 1231(a) claim can move forward because the Ninth
9 Circuit's decision in *Rodriguez III* was incorrectly decided because it is inconsistent
10 with a prior Ninth Circuit case, *Diouf v. Napolitano*, 634 F.3d 1081, 1091 (9th Cir.
11 2011). Petitioners' argument is misplaced. If Petitioners thought that the Ninth Circuit
12 erred in deciding *Rodriguez III*, they should have petitioned the Ninth Circuit for
13 reconsideration or a hearing *en banc*, or sought review from the Supreme Court.
14 *Rodriguez III* is the law of the case to the extent that it resolved Petitioners' § 1231(a)
15 claim and subclass, and Petitioners cannot reassert their § 1231(a) claim, here, where
16 *Rodriguez III* so clearly resolved that claim. *See Rodriguez III*, 804 F.2d at 1080.

17 Respondents, finally, argued that this Court lacks subject matter jurisdiction over
18 Petitioners' newly alleged Eighth Amendment claim because the new claim exceeded
19 the scope of the Supreme Court's remand in *Jennings*. The Supreme Court's remand
20 and its corresponding instructions were addressed to the Ninth Circuit, not to this
21 Court. Indeed, this Court is not limited to the scope set forth by the Supreme Court
22 to the Ninth Circuit, especially when the Ninth Circuit's subsequent remand to this
23 Court expressly instructed this Court to consider, *inter alia*, "any other relevant issue."

24
25 Accordingly,

26
27 **It is Ordered** that the motion to dismiss be, and hereby is, **Granted** as to
28 Petitioner Alex Cacho Castillo and Petitioners' § 1231 claim.

It is further Ordered that the motion to dismiss be, and hereby is, Denied as to Petitioners' Eighth Amendment claim.

Date: November 7, 2019

Terry J. Hatter, Jr.
Terry J. Hatter, Jr.
Senior United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2020, I electronically filed the foregoing document with the Clerk of the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system. Counsel in the case are registered CM/ECF users and service will be accomplished by the CM/ECF system.

/s/ Sarah Wilson

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